

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To: see form PCT/ISA/220	DATE ENTERED	05-10-04	PCT WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)
	DATE DUE	01-05-05	
	INITIALLED	NJP.	
	HORLEY		
Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)			

Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/GB2004/002873	International filing date (day/month/year) 01.07.2004	Priority date (day/month/year) 01.07.2003	
International Patent Classification (IPC) or both national classification and IPC A61K33/04, A61K33/44, A61K33/00, A61P11/04, A61P31/02			
Applicant Maleno, Idalecio Bossa Fernandes			

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application


2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Herrera, S Telephone No. +49 89 2399-8464
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**International application No.
PCT/GB2004/002873

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
- a. type of material:
- ☐ a sequence listing
- ☐ table(s) related to the sequence listing
- b. format of material:
- ☐ in written format
- ☐ in computer readable form
- c. time of filing/furnishing:
- ☐ contained in the international application as filed.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

 International application No.
PCT/GB2004/002873

Box No. II Priority

- 1.
- ☒
- The following document has not been furnished:

- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1,2,4,6-15
	No: Claims	3,5
Inventive step (IS)	Yes: Claims	
	No: Claims	1-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

2. Citations and explanations

see separate sheet
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB2004/002873

Section V

1. Reference is made to the following documents:

D1: US 2003/003163 A1 (HODOSH MILTON) 2 January 2003 (2003-01-02)

D2: US-A-5 100 653 (CAMPO GIOVANNI) 31 March 1992 (1992-03-31)

2. The subject-matter of the present claims 1,2,4, and 6-15 can be considered as novel in that compositions comprising potassium nitrate, particulate sulphur and activated charcoal have not been described before.

However, according to claim 3 and 5 only two of the three ingredients have to be present. Since the charcoal is not soluble and therefore not present in the mouth wash per se, the subject-matter of claims 3 and 5 lack novelty over D1 and D2 (cf. parts indicated in the search report).

3. First of all it is pointed out that since activated charcoal is insoluble in water, the mouth wash will not comprise any charcoal when ready for use.

Secondly it is pointed out that the use of sulphur as well as the use of potassium nitrate is known in the prior art for use in mouth and throat washes (cf. D1 and D2, parts indicated in the search report)

Therefore, the combined use - without showing any surprising or unexpected effect, cannot be considered as inventive and consequently the requirements of Article 33 (3) PCT have not been fulfilled.

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